



ATTORNEY DOCKET NO. 04110.0010U1
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Benini, et al.)
Serial No. 09/063,924)
Filed: April 22, 1998)
For: Frangible Metal Articles, Frangible)
Bullets and Ammunition and Method)
of Making Such Articles)

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Group Art Unit: 1702 OFFICE OF PETITIONS

Examiner: Mai, N.

PETITION UNDER 37 CFR § 1.137(b) TO REVIVE

OFFICE OF PETITIONS
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

NEEDLE & ROSENBERG, P.C.
1200 Candler Building
127 Peachtree Street, N.E.
Atlanta, Georgia 30303-1811

December 22, 2000

Sir:

Pursuant to 37 CFR § 1.137(b), applicants Timothy G. Smith and Roger J. Smith (the "Smiths") hereby petition to revive the subject application. Abandonment was unintentional.

Due to the reasons explained in detail below, no response was filed to the Official Action dated June 17, 1999.

12/27/2000 AWONDAF1 00000094 09063924

01 FC:241

620.00 UP

1. Unintentional Abandonment

An Office Action was issued on the above-referenced application June 17, 1999, requiring a restriction of the claims in the application filed on April 22, 1998. No response was

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SERIAL NO. 09/063,924**

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made by the Smiths because they were never aware of the Official Action or the subsequent abandonment until after a patent issued on July 18, 2000, on a continuation application filed only in the name of applicant Benini. The facts and supporting documentation are set forth below.

(A) Application Serial No. 09/063,924 (the "subject application") was filed in the name of Joseph C. Benini and the Smiths on April 22, 1998, by their attorney, Stephen L. Peterson of Finnegan, Henderson, Farabow, Garrett & Dunner.

(B) Benini and the Smiths had been in business together, but separated in 1998 some time after the subject application was filed.

(C) On November 5, 1999, without the knowledge of the Smiths, attorney Peterson filed a continuation application, Serial No. 09/186,366, naming only Benini as an inventor.

(C) On December 16, 1998, attorney Peterson filed a Request to Withdraw as Counsel, which was approved on January 5, 1999. A copy of that document is attached as Exhibit A.

(D) On January 21, 1999, Timothy Smith filed a Change of Correspondence Address, which was received by Group 1700 on January 27, 1999. The new correspondence address given was the Smiths' address: 321 Center St., St. Marys, PA. A copy of that document is attached as Exhibit B.

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SERIAL NO. 09/063,924**

(E) On June 17, 1999, the subject Official Action issued and was sent to Benini, at his address at 100 Avenue A, Kersey, PA, rather than to the Smiths' address. A copy of the cover sheet of that document is attached as Exhibit C.

(F) On January 31, 2000, a Notice of Abandonment issued on the subject application. This notice was also sent to Benini's address rather than to the Smiths. A copy of that document is attached as Exhibit D.

(G) On July 18, 2000, patent 6,090,178 issued to Benini on the continuation application.

The Smiths were not aware of the Official Action or the abandonment of the subject application until after patent no. 6,090,178 issued and until the file history of the subject application was subsequently obtained. Benini and attorney Peterson never advised the Smiths of any of these actions or activities, and the United States Patent and Trademark Office failed to send either document to the proper address as set forth in the Change of Correspondence Address notice filed by the Smiths.

Consequently, the entire delay was unintentional, pursuant to 37 CFR § 1.137(b). It is hereby respectfully requested that the Assistant Commissioner revive the above-referenced patent application and accept the proposed response to the Official Action dated June 17, 1999.

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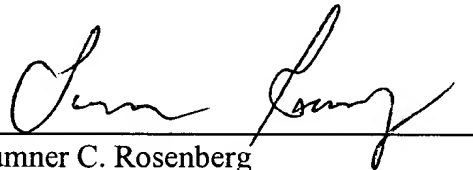
2. Petition Fee and Issue Fee

A check for the petition fee, as set forth in 37 C.F.R. § 1.17(m), for a small entity in the amount of \$620.00 is enclosed.

No additional fees are believed to be due; however, the Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Should the Commissioner have any question or comment as to this Petition, the Commissioner is requested to contact the undersigned at the telephone number below.

Respectfully submitted,



Sumner C. Rosenberg
Registration No. 28,753

NEEDLE & ROSENBERG, P.C.
1200 Candler Building
127 Peachtree Street, N.E.
Atlanta, Georgia 30303-1811
(404) 688-0770

ATTORNEY DOCKET NO. 04110.0010U1
SERIAL NO. 09/063,924

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Office of Petitions, Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231, on the date shown below.


Sumner C. Rosenberg

12/22/00
Date

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PATENT

Attorney Docket No. 07259.0001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#4

In re Application of:)
Joseph C. BENINI, et al.)
Serial No.: 09/063,924)
Filed: April 22, 1998)
For: FRANGIBLE METAL ARTICLES,)
FRANGIBLE BULLETS AND)
AMMUNITION AND METHOD OF)
MAKING SUCH ARTICLES)

Group Art Unit: 3641

Examiner: (Unassigned)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

REQUEST TO WITHDRAW AS COUNSEL UNDER 37 C.F.R. § 1.36

Pursuant to 37 C.F.R. § 1.36, the undersigned attorney of record requests that he, and all of the attorneys of record noted on the Declaration and Power of Attorney filed April 22, 1998, be allowed to withdraw as attorneys of record.

This request is being filed before the receipt of any action with respect to the above-referenced application having a period for response.

LAW OFFICES
INEGAN, HENDERSON,
ARABOW, GARRETT,
& DUNNER, L.L.P.
300 I STREET, N.W.
WASHINGTON, DC 20005
202-408-4000

1-17, 24-27
18-27

APPROVED

1/5/99

John F. Tugane

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If there is any fee due in connection with the filing of this Statement, please
charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

For: FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: Stephen L. Peterson
Stephen L. Peterson, partner
Reg. No. 26,325

Date: December 16, 1998

LAW OFFICES
FINNEGAN, HENDERSON,
FARABOW, GARRETT,
& DUNNER, L.L.P.
300 I STREET, N. W.
WASHINGTON, DC 20005
202-408-4000

EXHIBIT

B

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PTO/SB/122 (11-96)

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<p>CHANGE OF CORRESPONDENCE ADDRESS Application</p> <p>Address to: Assistant Commissioner for Patents Washington, D.C. 20231</p>	Application Number	09/063,924
	Filing Date	April 22 1998
	First Named Inventor	Joseph C. Bernal
	Group Art Unit	
	Examiner Name	
	Attorney Docket Number	

Please change the Correspondence Address for the above-identified application to:

☐

Customer Number

Type Customer Number here

Place Customer
Number Bar Code
Label here

OR

☒Firm or
Individual Name

TIMOTHY G SMITH

Address

321 center st

Address

City

St MARYS

State

PA

ZIP

15857

Country

US

Telephone

(814) 834-9528

Fax

(814) 772-4345

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I am the:

☒

Applicant.

☐Assignee of record of the entire interest.
Certificate under 37 CFR 3.73(b) is enclosed.☐

Attorney or agent of record.

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JAN 27 1999

GROUP 1700

Typed or
Printed Name

TIMOTHY G SMITH

Signature

[Signature]

Date

1/18/98

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/063,924	04/22/98	BENINI	J 07259-0001

JOSEPH C. BENINI
100 AVENUE A
KERSEY PA 15846

IM52/0617

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EXAMINER

MAIN

ART UNIT

PAPER NUMBER

1742

DATE MAILED:

06/17/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

MP

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/063,924	04/22/98	BENINI	J 07259-0001

IM62/0131

JOSEPH C. BENINI
100 AVENUE A
KERSEY PA 15846

EXAMINER

MAI, N

ART UNIT	PAPER NUMBER
1742	

DATE MAILED: 01/31/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Notice of Abandonment

Application No.
09/063,924

Applicant(s)
BENINI et al

Examiner
Ngoclan Mai

Group Art Unit
1742



This application is abandoned in view of:

- ☒ applicant's failure to timely file a proper response to the Office letter mailed on Jun 17, 1999.
- ☐ A response (with a Certificate of Mailing or Transmission of _____) was received on _____, which is after the expiration of the period for response (including a total extension of time of _____ month(s)) which expired on _____.
- ☐ A proposed response was received on _____, but it does not constitute a proper response to the final rejection.
(A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC)).
- ☒ No response has been received.
- ☐ applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.
- ☐ The issue fee (with a Certificate of Mailing or Transmission of _____) was received on _____.
- ☐ The submitted issue fee of \$ _____ is insufficient. The issue fee required by 37 CFR 1.18 is \$ _____.
- ☐ The issue fee has not been received.
- ☐ applicant's failure to timely file new formal drawings as required in the Notice of Allowability.
- ☐ Proposed new formal drawings (with a Certificate of Mailing or Transmission of _____) were received on _____.
- ☐ The proposed new formal drawings filed _____ are not acceptable.
- ☐ No proposed new formal drawings have been received.
- ☐ the express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on _____
- ☐ the letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
- ☐ the letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
- ☐ the decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- ☐ the reason(s) below:

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Ngoclan Mai
NGOCLAN MAI
PRIMARY PATENT EXAMINER
GROUP 2200